NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

September 18, 2002

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W., TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Notice
In the Matter of Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines For Purposes of Receiving Universal Service Support, Pursuant to 47 C.F.R. § 54.307 *et seq.,* RM-10522

In the Matter of the Commission's Rulemaking Considering Connection-Based Universal Service Contribution Proposals, CC Docket No. 96-45, CC Docket No. 98-171, CC Docket No. 90-571, CC Docket No. 92 –237, NSD File No. L-00-72, CC Docket No. 99-200, and CC Docket No. 95-116

Dear Ms. Dortch:

On Wednesday, September 18, 2002, John Metts, CEO and General Manager of Penasco Valley Telephone Cooperative, Greg Berberick, CEO, Matanuska Telephone Association, George Strandell, General Manager, Golden West Telecommunications Cooperative, Jim Rowe of the Alaska Telephone Association, and L. Marie Guillory and Daniel Mitchell representing the National Telecommunications Cooperative Association met with Commissioner Kevin J. Martin and his Senior Legal Advisor Daniel Gonzalez to discuss the above-referenced matters. Enclosed please find NTCA's Petition for Expedited Rulemaking and handouts summarizing NTCA's positions that were provided at the meeting.

In accordance with the FCC's rules, an original and two copies of this letter are being filed with the Secretary's office. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Daniel Mitchell
Daniel Mitchell
Sr. Regulatory Counsel

cc: Commissioner Kevin J. Martin
Daniel Gonzalez

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

NTCA Position

1) The assessment methodology should maintain the stability of the funds.

2) The contribution base should be expanded to include interstate telecommunications providers as well as providers of telecommunications services.

3) The mechanism should be implemented in a way that no provider gains a competitive advantage.

4) Safe harbor rules should not shield wireless carriers from the requirement to contribute on an equitable basis.

5) IXCs should not be allowed to escape their obligation to contribute on an equitable basis.

6) A connection based approach should not penalize specific classes of customers.

7) A *de minimums* exception should be retained in the interest of administrative simplicity.

8) The Commission's decision should be based on a record that permits it to evaluate the financial impact of its decision.

9) The methodology should recognize the shift of interstate traffic and revenues resulting from changes in technology and service provision.

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

REASONS FOR GRANTING NTCA'S PETITION FOR RULEMAKING

Captured and new subscribers are not defined in the rules (47 C.F.R. 54.307 *et seq)*, therefore, CETCs, particularly wireless CETCs, are filing loop counts for all their customers, regardless of whether the customer is a longstanding wireline customer adding wireless service to its existing wireline services. This is inconsistent with the original intent behind the rules.

Duplication of Support. Wireless CETCs are rapidly lining up for duplicative support because the rules neither require them to demonstrate their costs nor demonstrate that their customers no longer receive supported services from longstanding wireline ILECs before receiving support.

Competitive neutrality requires that "universal support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another." The current rules allow just the opposite.

Unfair Competitive Advantage. Wireless carriers are exploiting the loophole in the rules by using duplicative support payments to gain an unfair competitive advantage in rural ILEC service areas. This unfair competitive advantage is exacerbated by the fact that wireless carriers are also exempt from rate and state entry regulation, which allows them to avoid the substantial costs associated with carrier-of-last-resort obligations, service quality requirements, cost-studies, rate cases, accounting obligations, separations requirements, audit reviews, and other state and federal regulatory mandates.

Changed Circumstances. In 1997, the Commission concluded that a CETC could not unfairly compete in an ILEC's service area if it had lower costs because the CETC is required to provide and advertise its "service throughout the entire service area, consistent with Section 214 (e)...". Over the last three years, however, wireless CETCs have received ETC designations to provide service in much less than the entire ILEC service areas further enhancing their ability to compete unfairly.

Gaming Opportunities. This linking of support to the billing address is problematic because there is no necessary relationship between the wireless subscriber high-cost area billing address of choice and the area where the customer uses the service. The rule therefore creates innumerable opportunities for wireless CETCs to unfairly game universal service support to gain a competitive advantage.

Disincentive to Invest in Rural Areas. Because of the loopholes in the rules, rural ILECs, as part of thier overall investment strategy, must now consider whether to limit their investments because they know the more they invest to maintain and upgrade their networks the more their attractive high-cost support and ICLS becomes to unregulated CETCs considering entry into their markets.

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

The expeditious adoption of NTCA's proposed definitions and rule will minimize, if not completely eliminate, the duplicative support problem and continued unfair advantage that would otherwise occur while the Commission plans its broader rulemaking on portability over the next several months. It will also allow the Commission to focus on the broader portability issues knowing that it has closed a significant loophole in the rules preserving the integrity of the universal service mechanisms. USAC projects $76.4 million in CETC duplicative support for 3rd quarter 2002, and unless the rules are revised it is expected to grow into the hundreds of millions over the next year.

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org